



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

January 25, 2006

The Honorable Peter F. Bergin
House Executive Departments and Administration Committee
LOB 306
Concord, NH 03301

Re: HB 1351, relative to the rulemaking process

Dear Representative Bergin and Members of the Committee:

Thank you for the opportunity to comment on HB 1351, relative to the rulemaking process. This bill reflects the work of the study committee formed by HB 230 of the 2004 legislative session, as modified through the continuing efforts of the bill's prime sponsor. The Department of Environmental Services believes that the bill proposes modest but important changes affecting the rulemaking process established by RSA 541-A and so supports the bill.

Many of the bill's provisions should help to minimize the disputes that can arise in the later stages of rulemaking, when the Joint Legislative Committee on Administrative Rules ("JLCAR") is reviewing an agency's proposed rules. Specifically, the "explanation of the intent" of proposed rulemaking authority as required by section 1 (p. 1, lines 1-9) should provide much-needed guidance to agencies, the Office of Legislative Services/Division of Administrative Rules ("OLS/DAR"), the JLCAR, and the public regarding how the statutory provisions should be implemented. A statement of intent also should help policy committees to bring a more active focus to the rules that will be needed to implement the legislation. The addition to RSA 541-A:3-a proposed by section 3 (p. 1, lines 15-23) will eliminate an issue raised by OLS/DAR and is expected to reduce the amount of paper needed for a rule throughout the rulemaking and rule adoption stages, which will, over time, save money and file space both at agencies and at OLS/DAR. The revision to RSA 541-A:6, III proposed in section 4 (p. 1, line 24 - p. 2, line 3) will allow agencies to provide cost-effective notice of proposed rule changes to occupational licensees. The change proposed in section 5 (p. 2, lines 4-7), will clarify that rules can be written so as to be understandable by the regulated community and that technical language can be used as appropriate.

The Department also supports the proposed revisions relative to involving policy committees when issues of legislative intent arise (section 6; p. 2, lines 8-18), relative to establishing a time frame within which a joint resolution must be filed (section 7; p. 2, lines 19-37), relative to fiscal impact statements and the filing documents for interim rules (section 8; p. 3, lines 1-13 and section 9; p. 3 lines 14-16), and relative to not requiring rules for forms (section 11; p. 4, line 32).

Finally, the Department supports the re-establishment of a study committee to continue to examine the rulemaking process (section 10; p. 3, line 17 - p. 4, line 31). The rulemaking process has seen many improvements since the early 1990s when then-Governor Merrill described it as

"mind-numbing", but it is likely that further improvements can be made. Such efforts, however, are best undertaken by a group specifically charged with working together to identify issues and propose solutions rather than by individuals working in a vacuum.

Thank you for your consideration of these comments. If you have any questions, please contact Gretchen Hamel, Legal Unit Administrator, at 271-3137 or ghamel@des.state.nh.us.

Sincerely,



Michael P. Nolin
Commissioner

cc: Representative Betsey Patten
Representative Eric Stohl
Representative Alida Millham
Representative Nelson Allan